

SPECIAL CIVIL APPLICATION No. 733 of 1996

DATE OF DECISION : 06-02-1996

For Approval and Signature :

THE HON'BLE MR. JUSTICE S.K KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the judgment ? YES/NO

2. To be referred to the Reporter or not ? YES/NO

3. Whether their Lordships wish to see the fair copy of the judgment ? YES/NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder ? YES/NO

5. Whether it is to be circulated to the Civil Judge ? YES/NO

Mr. P.J Patel, the learned advocate for the Petitioner.

CORAM : S.K KESHOTE, J.  
06-02-1996

ORAL JUDGEMENT

Heard the learned advocate for the petitioner. It is not disputed by the learned advocate for the petitioner that vide Order dated 20th December, 1993, the petitioner was placed under suspension pending trial of the criminal case. It is

also not in dispute that the criminal case has not come to an end. Two fold prayers have been made by the petitioner namely; (i) to quash and set aside the order of his suspension dated 20th December, 1993 and (ii) to declare that action of reinstating the co-delinquent Shri K.C Rawal, as arbitrary, discriminatory and violative of Articles 14 & 16 of the Constitution of India. It is next prayed that by issuing appropriate writ or direction in the nature of mandamus, the respondent be directed to pay to the petitioner 75% subsistence allowance from 22nd June, 1994 instead from 1st June, 1995. The petitioner has come up with a case that Shri K.C Rawal, who is co-delinquent, has been reinstated back but discrimination has been made in the case of petitioner. Petitioner was given a chargesheet in which there are serious charges of misappropriation of grass bales. Inquiry has been initiated of the said charges. In the chargesheet, K.C Rawal was the co-delinquent. After the conclusion of the departmental inquiry, petitioner was served with a show cause notice. In the criminal case, Shri K.C Rawal is also one of the co-accused. Prayer of the petitioner to quash and set-aside the order of suspension is not tenable as he has not felt aggrieved of that order earlier and the criminal trial, pending of which he was ordered to be placed under suspension, has not been concluded. From the prayer, which has been made by the petitioner in para No. 10 (b), it appears that the petitioner challenges the order of respondent to reinstate Shri K.C Rawal and prayed to declare that action of reinstating the co-delinquent as arbitrary, discriminatory and violative of Articles 14 & 16 of the Constitution of India.

The challenge to the aforesaid extent cannot be gone into in this writ petition as Shri K.C Rawal is not impleaded as a party. The learned counsel for the petitioner has contended that both petitioner and Shri Rawal were placed under suspension because of the pending trial of criminal case in which they are accused and as such the action of the respondents to reinstate Shri Rawal and not to reinstate the petitioner is discriminatory. The order of reinstatement of Shri Rawal may not be correct. The plea of discrimination on the ground of the touch-stone of Article 14 cannot be placed on the basis of illegal and unwarranted orders of the authority. In case the order of Shri KC Rawal is illegal or unwarranted, no benefit can be given to the petitioner on the ground of discrimination but as Shri Rawal is not party to this writ petition, it is not desirable to give any verdict on the legality and propriety of the order of reinstatement of the said person. In such cases, it is always advisable and desirable to consider the right of the petitioner only when all the facts necessary for decision on the legality and propriety of the order of suspension of the other persons are their in the writ petition and not the case of that person. Reference in this respect may be made to the decision of the Supreme

Court in the case of Chandigarh Administration & Anr., verus Jagjit Singh and Another, AIR (1995) SC page 705 and the decision of this Court in the case of Bhanmati Tapubhai Muliya versus State of Gujarat, Principal Government Industrial Institute, reported in 1995 (2) GLH p-228. The challenge to the order of suspension for the petitioner is solely based on the ground of discrimination as mentioned earlier. The representation which has been filed by the petitioner has been rejected by the respondents under the Order dated 29th October, 1994. The representation has been rejected by the respondent on the ground that no discrimination has been made out in the matter of reinstatement by the said authority. Shri Rawal was ordered to be reinstated back in the service in pursuance to the order of the Government passed in his favour. When on representation made by Shri Rawal, the Government has considered his case and passed an order of his reinstatement, it cannot be said that the petitioner has any case of discrimination because admittedly the petitioner has not made any representation to the Government. The proper remedy for the petitioner would have been either to make a representation to the Government in the matter or to challenge the order of the respondent-Shri Rawal by filing a fresh writ petition and implead him as a party. In the present writ petition not only Shri Rawal but the State Government has also not been impleaded as a party. The order of suspension of the petitioner in the facts of this case cannot be held to be illegal or arbitrary. The order of suspension is questionable only on the ground of malafides of the authority who made the order or when prima facie there is no material on record to connect the delinquent with the charges. The departmental inquiry is still pending and the criminal case is also pending. There are serious charges of misappropriation and the petitioner himself has not considered the order of suspension to be arbitrary or malafide, otherwise, he could have challenged the same by filing an appeal under rule-18 of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971 before the appropriate authority or would have come before this Court in time. This writ petition has been filed after more than 2 years of the passing of the order of suspension and no explanation whatsoever has been given. This delay itself is fatal to the prayer made for quashing and setting aside this order. So far as the ground of discrimination is concerned, as stated earlier, appropriate course for the petitioner is to make a representation to the Government or to file a fresh writ petition by impleading the State Government and Shri KC Rawal as a party and challenging the order of the Government of the reinstatement of Shri KC Rawal.

The next grievance of the petitioner that he should have been given 75% of the pay as subsistence allowance from 26-6-1994 instead of 1-6-1995, it is suffice to say that matter

can appropriately be gone into by the authority concerned. The petitioner has not made any representation in this respect to the concerned authority. In such matters, it is always advisable and desirable that before approaching this Court, the petitioner should have approached to the authority concerned and should have called upon its decision in the matter. If even within reasonable time, the representation has not been decided then it may be a case where the petitioner may approach the appropriate redressal forum. That precisely has not been done in the present case.

In the result, this writ petition fails and the same is dismissed. However, in case the petitioner makes a representation to the State Government for reinstatement on the ground of discrimination then the Government shall decide the said representation of the petitioner within a period of two months from the date of its receipt. Similarly, petitioner is at liberty to file a representation to the appropriate authority for his grievance regarding rate at which he should have been given subsistence allowance from 22th June, 1994. If such a representation is made, the authority shall decide the same within 2 months from the date of its receipt. Dismissal of this writ petition will not come in the way of the petitioner to challenge the order of reinstatement of Shri K.C Rawal by filing a writ petition; if necessity arise.

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